

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0398  
Corporate Adjusted Gross Income Tax  
For the Tax Years 1998 - 2000**

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**ISSUE**

**I. Adjusted Gross Income Tax—Income Derived from Sources within Indiana**

**Authority:** IC 6-8.1-5-1(b); IC 6-3-2-2.

Taxpayer protests the exclusion by the Department of two affiliates from the consolidated corporate returns.

**STATEMENT OF FACTS**

Taxpayer included Parent MNY and subsidiaries MVet and MDE. Taxpayer filed a consolidated Indiana adjusted gross income tax return that included MVet and MNY. The Department conducted an audit and determined that neither MVet nor MNY had sufficient nexus with Indiana to permit them to file a consolidated return. Taxpayer protested and a hearing was held.

**I. Adjusted Gross Income Tax—Income Derived from Sources within Indiana**

**DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

Taxpayer is the successor in interest to a consolidated group engaged in manufacturing. That group filed a consolidated income tax return for 1998 that included MNY, MVet, MChem, and MMed. MChem and MMed subsequently became MDE. In tax years 1999 and 2000, the consolidated income returns included MNY, MVet, MDE, NPB, and PB. For the years at issue, the consolidated income tax returns included MNY and MVet. According to the audit summary, MNY's only income in the audit period was from dividends, interest, and income reported on federal Schedule D and Form 4797. The audit summary stated MNY did not have nexus within Indiana; consequently the income and losses attributed to MNY were removed from the consolidated return.

MVet sold its operating assets and property to a third party in 1997. MVet had a lease on a building located within Indiana, Plant, in which it was to have produced products. The building lease began in 1990, and MVet exercised an option to terminate the lease in 2000. The Plant was initially designed for research and manufacture, but in 1997 the FDA refused to grant approval

for the manufacture of MVet's product. As a result, the third party did not purchase the assets associated with this enterprise. MVet then transferred Plant to its parent, MDE. After the sale to the third-party and the transfer of the remaining assets to MDE, MVet did not have any assets left to manufacture any product.

MVet paid real estate taxes on land and structures in Indiana that had nominal value. The income tax returns for MVet for tax year 1998 showed no income rental and rental expenses of \$214,464. The income tax returns for MVet for tax year 1999 showed only interest income and rent paid of \$260,569. The income tax returns for MVet for tax year 2000 showed interest income, a nominal amount of other income, and rent paid of \$124,967.

The audit summary stated MVet did not have any income from sources within Indiana during the audit period. Although it had to pay rent on the building, there was no manufacturing of products at this facility. The audit summary stated that MVet was without sufficient nexus in Indiana and did not allow it to include its income and losses within the consolidated income tax return.

MNY claimed to have Indiana nexus, stating it provided the funds to MVet to pay the Indiana lease payments and real estate taxes. MNY asserted its employees made several trips to Indiana to try to donate certain land to the State of Indiana. The audit summary concluded that these activities did not create sufficient nexus in Indiana for MNY.

At the hearing, Taxpayer argued that the activities of MVet and MNY created sufficient nexus to permit them to be included within the consolidated return. The calculation of Indiana adjusted gross income tax is based upon the combination of property, payroll, or sales within Indiana. IC 6-3-2-2. The statute states that income can be derived from:

- (1) real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under IC 6-3-2-2.2.

*Id.* Neither MVet nor MNY were in the real estate business. MVet had a failed enterprise and had an outstanding liability MNY was paying. The ownership of Plant was not a business enterprise; it was the holding of a capital asset. Neither MVet nor MNY were engaged with attempting to generate income from the Plant as real estate. For this reason, it was not an income-producing enterprise that would create sufficient nexus to allow them to be included in the consolidated returns.

### **FINDING**

For the reasons stated above, Taxpayer's protest is denied.